

105TH CONGRESS
1ST SESSION

S. 1533

To amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 1997

Mr. BREAU (for himself and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Migratory Bird Treaty
5 Reform Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) The Migratory Bird Treaty Act was enacted
9 in 1918 to implement the 1916 Convention for the
10 Protection of Migratory Birds between the United

1 States and Great Britain (for Canada). The Act was
2 later amended to reflect similar agreements with
3 Mexico, Japan, and the former Soviet Union.

4 (2) Pursuant to the Migratory Bird Treaty Act,
5 the Secretary of the Interior is authorized to pro-
6 mulgate regulations specifying when, how, and
7 whether migratory birds may be hunted.

8 (3) Contained within these regulations are pro-
9 hibitions on certain methods of hunting migratory
10 game birds to better manage and conserve this re-
11 source. These prohibitions, many of which were rec-
12 ommended by sportsmen, have been in place for over
13 60 years and have received broad acceptance among
14 the hunting community with one principal exception
15 relating to the application and interpretation of the
16 prohibitions on the hunting of migratory game birds
17 by the aid of baiting, or on or over any baited area.

18 (4) The prohibitions regarding the hunting of
19 migratory game birds by the aid of bait, or on or
20 over bait, have been fraught with interpretive dif-
21 ficulties on the part of law enforcement, the hunting
22 community, and courts of law. Hunters who desire
23 to comply with applicable regulations have been sub-
24 ject to citation for violations of the regulations due
25 to the lack of clarity, inconsistent interpretations,

1 and enforcement. The baiting regulations have been
2 the subject of multiple congressional hearings and a
3 law enforcement advisory commission.

4 (5) Restrictions on the hunting of migratory
5 game birds by the aid of baiting, or on or over any
6 baited area, must be clarified in a manner that rec-
7 ognizes the national and international importance of
8 protecting the migratory bird resource while ensur-
9 ing consistency and appropriate enforcement includ-
10 ing the principles of “fair chase”.

11 **SEC. 3. CLARIFYING HUNTING PROHIBITIONS.**

12 Section 3 of the Migratory Bird Treaty Act (16
13 U.S.C. 704) is amended—

14 (1) by inserting “(a)” after “SEC. 3.”; and

15 (2) by adding at the end the following:

16 “(b)(1) No person shall—

17 “(A) take any migratory game bird by the aid
18 of baiting, or on or over any baited area, where the
19 person knows or reasonably should have known that
20 the area is a baited area; or

21 “(B) place or direct the placement of bait on or
22 adjacent to an area for the purpose of causing, in-
23 ducing, or allowing any person to take or attempt to
24 take any migratory game bird by the aid of baiting
25 or on or over the baited area.

1 “(2) Nothing in this subsection prohibits any of the
2 following:

3 “(A) The taking of any migratory game bird,
4 including waterfowl, from a blind or other place of
5 concealment camouflaged with natural vegetation.

6 “(B) The taking of any migratory game bird,
7 including waterfowl, on or over—

8 “(i) standing crops, flooded standing crops
9 (including aquatics), flooded harvested crop-
10 lands, grain crops properly shocked on the field
11 where grown; or

12 “(ii) grains, agricultural seeds, or other
13 feed scattered solely as a result of—

14 “(I) accepted soil stabilization prac-
15 tices or accepted agricultural planting, har-
16 vesting, or manipulation after harvest; or

17 “(II) entering or exiting of areas by
18 hunters or normal hunting activities such
19 as decoy placement or bird retrieval, if rea-
20 sonable care is used to minimize the scat-
21 tering of grains, agricultural seeds, or
22 other feed.

23 “(C) The taking of any migratory game bird,
24 except waterfowl, on or over any lands where salt,

1 grain, or other feed has been distributed or scattered
 2 as a result of—

3 “(i) accepted soil stabilization practices;

4 “(ii) accepted agricultural operations or
 5 procedures; or

6 “(iii) the alteration for wildlife manage-
 7 ment purposes of a crop or other feed on the
 8 land where it was grown, other than distribu-
 9 tion of grain or other feed after the grain or
 10 other feed is harvested or removed from the site
 11 where it was grown.

12 “(3) As used in this subsection:

13 “(A)(i) Except as otherwise provided in this
 14 Act, the term ‘baiting’ means the intentional or un-
 15 intentional placement of salt, grain, or other feed ca-
 16 pable of attracting migratory game birds, in such a
 17 quantity and in such a manner as to serve as an at-
 18 tractant to such birds to, on, or over an area where
 19 hunters are attempting to take them, by—

20 “(I) placing, exposing, depositing, distrib-
 21 uting, or scattering salt, grain, or other feed
 22 grown off-site;

23 “(II) redistributing grain or other feed
 24 after it is harvested or removed from the site
 25 where grown;

“(III) altering agricultural crops, other than by accepted agricultural planting, harvesting, or manipulation after harvest, altering millet planted for nonagricultural purposes (planted millet), or altering other vegetation (as specified in migratory bird hunting regulations issued by the Secretary of the Interior) planted for nonagricultural purposes; or

“(IV) gathering, collecting, or concentrating natural vegetation, planted millet, or other vegetation (as specified in migratory bird hunting regulations issued by the Secretary of the Interior) planted for nonagricultural purposes, following alteration or harvest.

“(ii) The term ‘baiting’ does not include—

“(I) redistribution, alteration, or concentration of grain or other feed caused by flooding, whether natural or man induced; or

“(II) alteration of natural vegetation on the site where grown, other than alteration described in clause (i)(IV).

“(iii) With respect only to the taking of waterfowl, the term ‘baiting’—

“(I) does not include, with respect to the first special September waterfowl hunting sea-

son locally in effect or any subsequent waterfowl hunting season, an alteration of planted millet or other vegetation (as specified in such regulations), other than an alteration described in clause (i)(IV), occurring before the 10-day period preceding the opening date (as published in the Federal Register) of that first special season; and

“(II) does not include, with respect to the first regular waterfowl hunting season locally in effect or any subsequent waterfowl hunting season, such an alteration occurring before the 10-day period preceding the opening date (as published in the Federal Register) of that first regular season.

“(B) The term ‘baited area’ means any area that contains salt, grain, or other feed referred to in subparagraph (A)(i) that was placed in that area by baiting. Such an area shall remain a baited area for 10 days following complete removal of such salt, grain, or other feed.

“(C) The term ‘accepted agricultural planting, harvesting, and manipulation after harvest’ means techniques of planting, harvesting, and manipulation after harvest that are—

1 “(i) used by agricultural operators in the
2 area for agricultural purposes; and

3 “(ii) approved by the State fish and wild-
4 life agency after consultation with the Coopera-
5 tive State Research, Education, and Extension
6 Service, the Natural Resources Conservation
7 Service, and the United States Fish and Wild-
8 life Service.

9 “(D) The term ‘accepted agricultural operations
10 or procedures’ means techniques that are—

11 “(i) used by agricultural operators in the
12 area for agricultural purposes; and

13 “(ii) approved by the State fish and wild-
14 life agency after consultation with the State Co-
15 operative State Research, Education, and Ex-
16 tension Service, the State Office of the Natural
17 Resources Conservation Service, and the United
18 States Fish and Wildlife Service.

19 “(E) The term ‘accepted soil stabilization prac-
20 tices’ means techniques that are—

21 “(i) used in the area solely for soil sta-
22 bilization purposes, including erosion control;
23 and

24 “(ii) approved by the State fish and wild-
25 life agency after consultation with the State Co-

operative State Research, Education, and Extension Service, the State Office of the Natural Resources Conservation Service, and the United States Fish and Wildlife Service.

“(F) With respect only to planted millet or other vegetation (as designated in migratory bird hunting regulations issued by the Secretary of the Interior) planted for nonagricultural purposes, the term ‘planted’—

“(i) subject to clause (ii), means sown with seeds that have been harvested; and

“(ii) does not include alteration of mature stands of planted millet or of such other vegetation planted for nonagricultural purposes.

“(G) The term ‘migratory game bird’ means any migratory bird included in the term ‘migratory game birds’ under part 20.11 of title 50, Code of Federal Regulations, as in effect October 3, 1997.”.

SEC. 4. PENALTIES.

Section 6(c) of the Migratory Bird Treaty Act (16 U.S.C. 707(c)) is amended as follows:

(1) By striking “All guns,” and inserting “(1) Except as provided in paragraph (2), all guns”.

(2) By adding the following at the end:

1 “(2) In lieu of seizing any personal property not cru-
2 cial to the prosecution of the alleged offense, the Secretary
3 of the Interior shall permit the owner or operator of the
4 personal property to post bond or other collateral pending
5 the disposition of any proceeding under this Act.”.

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